

City of Lafayette Committee Report

For: City Council
By: Charter City Committee
Date Written: July 6, 2009
Meeting Date: July 13, 2009
Subject: Recommendation to City Council

Background

The Committee was asked to recommend whether Lafayette should become a charter city, and, if so, to propose a charter for consideration by the City Council and voters. The Committee was also asked to determine how the City Council can communicate with residents more effectively, using the charter city topic as an example.

Discussion

The Committee met nine times since April 2009. A list of Committee members and brief information about them is in Appendix A. The Committee initially studied information about charter cities from the League of California Cities and other sources. The Committee members proposed interviewing approximately 20 cities, most of which are Charter Cities, and a few that tried to become a Charter City and failed. Cities of all size, economic status, and geographical location were chosen. Some were deemed similar to Lafayette, while others were not.

Committee members successfully contacted and interviewed representatives from the following cities: Alameda, Davis, Del Mar, Folsom, Indian Wells, Monterey, Palo Alto, Piedmont, Rosemead, San Luis Obispo, San Rafael, San Ramon, Santa Maria, Solvang and Vallejo. Some of these cities have had their charters for well over 100 years. Others adopted their charters recently. Some of the charters were very brief, others were quite extensive. A brief charter captures the benefits of being a charter city, but places enabling laws in ordinances adopted by the Council rather than in the charter. Cities that place more detail in the charter must then get voter approval to amend the charter when changes are needed.

It appears from the research to date, that the best functioning charters are those that are short and allow for the greatest flexibility for the council. Staff and elected officials from cities with longer charters typically identified one or more elements of their charters that create problems. Short charters allow the city councils to enact policies by ordinance, much as general law cities do. Examples of such charters from San Ramon and Santa Maria are in Appendix B.

Charter cities have wide discretion to set rules over municipal affairs that are not preempted by state government. Years ago, many actions of local government were deemed municipal affairs. However, all three branches of state government acted to reduce the areas of freedom provided to charter cities in recent decades. The benefits of a charter that still exist are summarized below along with their near term applicability to Lafayette:

1. Property Transfer Tax

Voters in a charter city can approve a property transfer tax by a simple majority. Property transfer tax rates for general law cities are 0.055% of the value of the property being sold. Property transfer tax rates in charter cities range from that level to 1.3% (Piedmont). Neither figure includes the property transfer tax proceeds received by the County. Before Proposition 218 passed in 1996, City Councils of charter cities could adopt a property transfer tax by ordinance. Subsequently, voters must approve the tax. Of the 108 charter cities, 22 have increased their property transfer tax rates. The Committee believes a property transfer tax would be difficult, but not impossible to pass in the current economic environment. While the current economic environment would argue against passing a tax, the take-aways of local money by state government creates an argument that Lafayette needs become more independent of state government so that service levels are less subject to the quality of governance in Sacramento.

2. Local control over contracting provisions

General Law cities must accept the lowest responsible bid for capital project work over \$5,000. Preparing bid packages, advertising, evaluating bids consume substantial time of City staff and are lengthy. Many charter cities bypass some of these procedures for projects up to \$100,000. They may also be able to select a vendor other than the lowest bidder if they believe the lowest bidder is not responsible. The charter city staff interviewed by Committee members thought these provisions of a charter are useful.

However, The City of Lafayette has already adopted the Uniform Construction Cost Accounting Act, which allows the City to award a public works contract of \$30,000 or less by negotiation, participate in informal bidding procedures for contracts of \$125,000 or less by following certain noticing procedures, and to award public works contracts of \$125,000 or more to the lowest responsible bidder. Therefore, because the City already enjoys most, if not all of the same benefits as a charter city in this regard, the Committee does not believe this alone is a compelling reason to become a charter city.

3. Contract preferences

Charter cities have greater ability to direct contracts to local vendors than do general law cities. This would be a useful feature, but is unlikely to be a sufficient reason to become a charter city in the minds of voters.

4. Election procedures

Charter cities have more flexibility regarding election procedures, e.g. installing term limits, creating elections by district, having a directly elected Mayor, having other directly elected officials, e.g., City Clerk and Treasurer, and adjusting or prohibiting the pay of City elected

officials. Historically, there has been minimal dissatisfaction with Lafayette's current procedures and the Committee does not recommend that a charter be adopted to obtain these benefits.

5. Prevailing wage

Charter cities can pay non-prevailing wages for capital projects that involve only City funds. However, no charter cities in the Bay Area do so, and efforts by other Charter Cities to adopt a charter that do not commit the City to pay prevailing wage either by a provision within the charter or by ordinance have not succeeded. The Committee does not believe this feature can be achieved.

Analysis

The risks of being a charter city relate to amendments that constrain government actions in a manner that may not benefit the population. Two cities we interviewed have binding arbitration amendments included in their charters. While the binding arbitration procedure is used infrequently, city staffs believe that its existence has pushed their Councils to adopt compensation packages that are more expensive than might have existed otherwise. Another city has a land use provision in its charter that has hampered the planning for an abandoned military base in its jurisdiction. A fourth municipality has a charter provision that requires voter approvals for all rezoning, and has the Council rather than City Manager appoint department heads.

These risks may not occur. Most cities report very few if any amendments, and that the amendments that have been placed on the ballot in the past 10 years have been sponsored by the City Council or a Charter Committee appointed by the Council.

The Committee carefully weighed the risks versus the benefits of becoming a charter city. The Committee recognized that the recently completed Finance Committee study showed there are substantial unfunded needs that the current city revenues cannot cover such as road repairs, police services, and the purchase of open space, to name a few. The Finance Committee also concluded that there are not areas in the city budget in which the city can reduce costs sufficiently in order to cover the costs of the above-mentioned needs. Since the Finance Committee completed its work, potential raids by state government on funds the City receives through the state, e.g., gas taxes and property taxes, show the importance of having revenue streams that are controlled locally.

Therefore, the Charter City Committee recommends that the City Council place a measure on the November 2010 ballot that would ask the citizens of Lafayette to begin to take control of their own destiny by becoming a Charter City.

The Committee also recommends that a separate measure be placed on the same ballot, with a severability clause, that would enable the City Council to raise the current property transfer tax from 0.055% to amount deemed appropriate by the City Council prior to the election.

Finally, we would ask that in order to gauge citizen awareness of and attitudes towards a property transfer tax, questions regarding such a tax be included in the survey that we understand the Open

Space Committee plans to conduct. There is relevance to that committee's work because proceeds from a property transfer tax can be used to purchase open space. The Committee will meet to assess the implications of the survey results in the fall.

The Committee is also seeking direction from the Council as to whether it would like the Committee to prepare a draft charter for public and Council review once the Committee reconvenes in the fall.

The second part of the Committee's work is to determine how the City can communicate with residents more effectively. We propose to take up that issue in the fall when fewer Committee members will be traveling.

Recommendation

1. Place a measure on the November 2010 ballot asking Lafayette residents to approve a charter.
2. Place an additional measure on the November 2010 ballot authorizing the city to increase the property transfer tax.
3. Conduct a community survey as part of the Open Space poll to determine attitude towards and tolerance for increased property transfer tax.
4. Provide direction to the Committee regarding a draft charter.